



# Milwaukee Community Justice Council

Working collaboratively to ensure a fair, efficient, and effective justice system that enhances public safety and quality of life in our community.

TO: Community Justice Council Executive Committee

FROM: Nathan Holton, Community Justice Council Coordinator

DATE: June 23, 2014

SUBJECT: CJC Coordinator Recidivism Measure Recommendation

*Note: The below text is a draft memo that offers research and background on the definition and measurement of recidivism to the Community Justice Council Executive Committee for the purpose of establishing a framework of recidivism measures for programs in which recidivism is a suitable effectiveness measure. This memo is part of the CJC's response to the Comptroller audit titled "Electronic Monitoring can Achieve Substantive Savings for Milwaukee County, but Only if Pursued on a Large Scale with Satisfactory Compliance Rates." That audit recommended, among other things, that the CJC establish a "uniform definition or conceptual framework for defining recidivism suitable for establishing program-specific measures of effectiveness for alternative to incarceration and jail diversion programming in the Milwaukee County Criminal Justice System." The Community Justice Council will continue to study the issue, with the goal of formally adopting suitable recidivism measures.*

## **The Definition of Recidivism**

### **A. Theoretical Definitions**

In 1984, Michael D. Maltz published the landmark book “Recidivism” for the purpose of providing a “thorough analysis of the concept of recidivism.”<sup>1</sup> The book is considered an essential treatment on the subject and is a frequent reference in subsequent recidivism research. In the book, Maltz defines recidivism as “the reversion of an individual to criminal behavior after he or she has been convicted of a prior offense, sentenced, and (presumably) corrected.”<sup>2</sup>

While Maltz focuses on the corrective purpose of the criminal justice process, Pew Center on the States focuses on the punishment aspect of criminal justice in its definition of recidivism, which reads: “recidivism is the act of reengaging in criminal offending despite having been punished.”<sup>3</sup>

The National Institute of Justice combined each previous focus in its definition, which states that recidivism “refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime.”<sup>4</sup>

An important attribute that all definitions share is that the focus is on the actions of the offender, not on a particular criminal justice decision point. This is an important fact to consider when examining different ways to measure recidivism.

### **B. Theoretical Critiques of Recidivism**

Prior to examining different possible measurements of recidivism, Maltz offers a compelling critique of the concept of recidivism measurement. After 30 years of recidivism measurement and emphasis, it is clear that criminal justice practice set that critique aside.<sup>5</sup>

### **C. The Elements of the Recidivism Measurement**

All definitions share three common traits: a *starting event*, a *measure of failure* following the starting event, and a *recidivism window of time* that begins with the starting event.<sup>6</sup> An individual recidivates if the individual has a failure event within the recidivism window. The recidivism rate of a population is that percentage of individuals who recidivated during the recidivism window of time.

Generally, the *starting event* for a measurement of recidivism is the date that an individual is no longer under some (or any) type of criminal justice system-based supervision. This could be the date they are

<sup>1</sup> Maltz, M.D. (1984). *Recidivism*. San Diego, CA: Academic Press. Inc. NCJ 146886. (Internet edition available at <http://www.uic.edu/depts/lib/forr/pdf/crimjust/recidivism.pdf>).

<sup>2</sup> See FN1, page 1.

<sup>3</sup> Pew Center on the States, *State of Recidivism: The Revolving Door of America's Prisons* (Washington, D.C: The Pew Charitable Trusts, April 2011).

<sup>4</sup> U.S Department of Justice, Office of Justice Programs, National Institute of Justice, “Recidivism,” modified June 17<sup>th</sup>, 2014. Available at: <http://www.nij.gov/topics/corrections/recidivism/pages/welcome.aspx>.

<sup>5</sup> See FN1, page 25. After considerable discussion, the author concludes: “We see, then, that there are many valid criticisms of recidivism as a measure of effectiveness. It reflects certain values about offenders and society that may be unwarranted; it implies that we know how to correct; it is a measure of failure, not success. Even if we accept recidivism as a measure, we find that it is difficult to measure with precision; even if it could be measured precisely, there are no set standards with which to compare measurements; and even if standards existed, interpretation of the findings are likely to be flawed.”

<sup>6</sup> U.S Bureau of Justice Statistics, Prisoner Recidivism Analysis Tool, February 3, 2011, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=2392>.

released from jail or prison, the date they graduate from a program, or the date that they otherwise complete a required action. In the case of the CJC, there are several different starting points depending on the population being measured. Starting points include release from the House of Correction, graduation from Drug Treatment Court, graduation from the Day Reporting Center, and completion of a diversion or deferred prosecution.

Given that the focus of recidivism is the behavior of the individual, the ideal failure event date that would trigger the *measure of failure* is the date that the individual committed the crime in question. This is the date utilized by the Wisconsin Department of Corrections in its definition of recidivism.<sup>7</sup>

Unfortunately, there are practical limitations with such an approach generally and for the CJC specifically. The date of offense is not always known and is not always readily accessible for large scale measurement. From an academic perspective, the primary consideration when choosing a failure event date is a readily available date that is as close to the date of offense as possible.<sup>8</sup> This usually means going with the date of arrest.

Most mainstream recidivism studies use the date of arrest as the failure event date.<sup>9</sup> This date is generally more accessible than the date of offense and, depending on the jurisdiction, often more accessible than the adjudication (or charging) date and the conviction date.

However, recidivism measures differ in when the measure counts an arrest as a measure of failure. A “re-arrest” measure will count any arrest as a failure event. A “readjudicate” (or “recharge”) measure will count any arrest that results in charges. A “reconvict” rate will count any arrest that results in a conviction. A “criminogenic reconvict” measure will count any arrest that results in a conviction that is equal to or more serious than the previous criminal conviction. Finally, in the particular case of prison recidivism measures, a “reincarceration” rate will count any arrest that results in reincarceration in jail or prison and a “reimprisonment” rate will count any arrest that results in a return to only prison.<sup>10</sup>

There are earnest policy-based differences in opinion as to which measures are the most useful and legitimate. One argument against using simple arrest as a measure of failure is that the legal standard for arrest, probable cause, is less rigorous than that of conviction, which is proof beyond a reasonable doubt.<sup>11</sup> As a result of that standard, arrests will count those individuals as recidivists who were arrested but who did not actually commit an offense. Therefore, all else equal, the rearrest rate overcounts recidivism.

On the other hand, more restrictive definitions of recidivism will not count arrestees who, for example, are factually guilty but were not charged and/or convicted due to reasons not related to whether they committed the offense in question.

Either way, aside from using the date of offense, the date of arrest is the best failure event date to use for any recidivism measure. It is the date that is available to measure that is consistently the date closest to the offense date. Using other dates, such as the charge date or the conviction date, add in criminal justice

<sup>7</sup> State of Wisconsin Department of Corrections, “Performance Measurement Series: Recidivism After Release from Prison, June 2014, available at <http://doc.wi.gov/documents/web/about/dataresearch/Recidivism%20After%20Release%20from%20Prison%20FINAL.pdf>.

<sup>8</sup> See FN1, page 56.

<sup>9</sup> See generally Section I, Subsection D.

<sup>10</sup> Since release from state prison is not a starting event for any of the populations to be measured, the reincarcerate and reimprison measures are outside the scope of this project.

<sup>11</sup> See FN1, page 56.

system processing time to the measurement and skew the results. The date that a jurisdiction uses to trigger a measure of failure in *any* recidivism measure should be that date closest to the offense date that is readily available to measure. The decision point to debate is not the date to use, the date to use is the best available date. The decision point to debate when it comes to measuring recidivism is *when* to count that date as a trigger date for a measure of failure.

Failure Event Date to Trigger Measure of Failure				
<u>Measure of Recidivism</u>	<u>When to Count</u>	<u>Ideal Date</u>	<u>Best Date Available</u>	<u>Most Accessible Date</u>
Rearrest	All the time	Date of Offense	Date of Arrest	N/A
Recharge	When charges are issued			Date of Charge
Reconvict	When there is a conviction			
Criminogenic Reconvict	When there is a conviction of equal or greater seriousness			

Figure 1: Recidivism Measure by Event Date and When Event Date is Counted

There are strengths and weaknesses to each of the above measures. The National Institute of Justice classifies each of the first three measures as recidivism.<sup>12</sup> It is common for studies to track each of the first three measures while also tracking the type of offense convicted on, which allows for tracking of the fourth measure.<sup>13</sup> Each offers a different data point that can be useful in crafting criminal justice policy.

The last element of a recidivism measure is the *recidivism window of time*. This element is a critical one, as the period needs to be long enough to capture a sufficiently high percentage of reoffending that will occur while being short enough to provide timely information for policy makers and the public.<sup>14</sup> The window of time can typically vary from anywhere between six months<sup>15</sup> and five years.<sup>16</sup> It is common for recidivism studies to track individuals for three years from the starting event<sup>17</sup> and the National Advisory Commission on Criminal Justice Standards and Goals recommended a three year window of time because studies using longer periods have found that a majority of reoffending occurs in the first three years after the starting event.<sup>18</sup>

<sup>12</sup> See FN4, National Institute of Justice, "Recidivism."

<sup>13</sup> Alexia D. Cooper, Ph.D., Matthew R. Durose, Howard N. Snyder, Ph.D. "Recidivism Of Prisoners Released In 30 States In 2005: Patterns From 2005 To 2010," U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, April 22, 2014, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>

<sup>14</sup> Public Policy Forum, "Measuring and Defining Recidivism Overview." Undated.

<sup>15</sup> See Milwaukee County Day Reporting Center, Section I Subsection D. The shortest recidivism window of time is six months. Additionally, see National Association of Pretrial Services, "Measuring What Matters: Outcome and Performance Measures from the Pretrial Diversion Field." Undated Draft. NAPSA suggests a window of time that matches the treatment period. A six month program would have a six month window of time.

<sup>16</sup> See FN13, Alexia D. Cooper.

<sup>17</sup> See FN3, Pew Center on the States.

<sup>18</sup> National Advisory Commission on Criminal Justice Standards and Goals (1973). *Corrections*. U.S Government Printing Office, Washington, D.C.

There is a school of thought, at least in the case of diversionary programming, that the recidivism measure of time should match the length of programming on the theory that shorter program times produce shorter expected periods of crime-free behavior.<sup>19</sup> In the case of the CJC, this would result in shorter windows of time.

Conversely, a full five year window of time is beneficial because it “provides supplementary information for policymakers and practitioners on the officially recognized criminal behavior of release prisoners” and “provides a more complete assessment of the number and types of crimes committed by released persons in the years following their release.”<sup>20</sup>

#### D. Examples of Recidivism Measures

According to Maltz, “recidivism has been defined on an ad hoc basis, without consideration of its true meaning; and it has been measured in ways remarkable for their inconsistency.”<sup>21</sup> A review of more recent literature reveals that, although Maltz’ contention is still the case, there tends to be common threads among the various recidivism measures that have become popular.

The three most common measures of recidivism are re-arrest, reconviction, and re-incarceration.<sup>22</sup> The three measures recommended by Maltz that are within the scope of this project are “arrest and conviction” (using date of arrest on cases that lead to conviction), “arrest and prosecution” (using date of arrest on cases that lead to charges filed) and “arrest” (date of arrest, regardless of whether prosecution or conviction ensues).<sup>23</sup>

The Bureau of Justice Statistics (BJS), in its primary studies on recidivism, uses the same three measures as suggested above by Maltz, along with reincarcerate and reimprison measures.<sup>24,25</sup> In its 1994 Prisoner Recidivism Analysis tool, BJS offers rearrest, readjudicate, reconvict, reincarcerate, and reimprison rates within up to three years of date of release from prison. In its 2005 study, BJS studies the same measures with a window of time of up to five years.

Cumulative percent of released prisoners who were:	Time after release			
	6 months	1 Year	2 Years	3 Years
Rearrested	32.7%	47.5%	62.6%	70.7%
Readjudicated	14.0%	27.9%	45.1%	56.1%
Reconvicted	11.4%	23.1%	38.9%	49.6%
Reincarcerated	8.8%	18.1%	31.0%	40.2%
Reimprisoned	5.2%	11.0%	20.2%	27.3%

*Figure 2: Recidivism Rates of Prisoners Released in 1994 from Prisons in 15 States*<sup>26</sup>

<sup>19</sup> See FN 15, NAPSA

<sup>20</sup> See FN13, Alexia D. Cooper.

<sup>21</sup> See FN1, page 1.

<sup>22</sup> See FN14, Public Policy Forum.

<sup>23</sup> See FN1, page 65.

<sup>24</sup> See FN6, Prisoner Recidivism Analysis Tool.

<sup>25</sup> See FN13, Alexia D. Cooper.

<sup>26</sup> See FN6, Prisoner Recidivism Analysis Tool. The BJS tool allows the user to select various prisoner demographic and sentence characteristics in order to find recidivism rates for select populations. The above numbers were produced by selecting every available characteristic and therefore getting recidivism rates for all measures prisoners in the study.

Though the above study is measuring recidivism of prisoners in 15 states (none of which is Wisconsin) in 1994, it is useful to examine because it highlights the impact that the different measures of failure and windows of time have on the recidivism rate. Depending on the measure, the same population had a recidivism rate that varied from 5.2% to 70.7%.

The 2005 report outlines the various recidivism definitions that it uses.<sup>27</sup> Each is laid out below:

- Arrest: An arrest within 5 years of exiting prison in 2005. Information presented on the number of arrests is based on unique arrest dates, not individual charges.
- Adjudication: An arrest within 5 years of exiting prison in 2005 that resulted in a subsequent court adjudication or disposition (e.g., convictions, dismissals, acquittals, or deferred adjudications). Information on the number of adjudications is based on each unique arrest date that led to an adjudication, not the date of adjudication.
- Conviction: An arrest within 5 years of exiting prison in 2005 that resulted in a subsequent court conviction. Information on the number of convictions is based on each unique arrest date that led to a conviction, not the date of conviction.
- Incarceration: An arrest within 5 years of exiting prison in 2005 that resulted in a prison or jail sentence. Information on the number of incarcerations is based on each unique arrest date that led to a prison or jail sentence, not the date that the sentence was imposed.
- Imprisonment: An arrest within 5 years of exiting prison in 2005 that resulted in a prison sentence. When the type of facility (e.g., prison or jail) where an incarceration sentence was to be served was not reported in the criminal history records, a sentence of a year or more was defined as imprisonment. Information on the number of prison sentences is based on each unique arrest date that led to a prison sentence, not the date that the sentence was imposed.

In addition to national examples, there are a variety of state and local examples that can serve as a useful reference point. The Wisconsin Department of Corrections defines recidivism as “a new offense resulting in a conviction and sentence to the WI DOC.” The starting event is the offender’s prison release date. The recidivism window of time is three years. The failure event is the date of offense “that results in a new conviction and sentence to WI DOC custody or supervision.”<sup>28</sup>

The Treatment Alternatives and Diversion analysis conducted by the University of Wisconsin Population Health Institute measures recidivism by looking at “new conviction,” which is the “first conviction for a new offense after discharge from TAD as documented in the CCAP system.”<sup>29</sup>

The Milwaukee County Drug Treatment Court, as evaluated by the University of Wisconsin-Milwaukee, uses the recharge measure to define recidivism. It defines recidivism as “a new case number in CCAP due to a felony (CF), misdemeanor (CM), or criminal traffic (CT) charge.”<sup>30</sup>

<sup>27</sup> See FN13, Alexia D. Cooper.

<sup>28</sup> See FN7, State of Wisconsin Department of Corrections.

<sup>29</sup> See University of Wisconsin Population Health Institute, “Treatment Alternatives and Diversion (TAD) Program: Advancing Effective Diversion in Wisconsin, 2007-2010 Evaluation Report,” December 2011, available at <http://uwphi.pophealth.wisc.edu/about/staff/van-stelle-kit/tad-2011-evaluation-report-full-report.pdf>. See page 43: “Any criminal offense is included, as well as conviction for operating after license revocation/suspension only for OWI offenders admitted to TAD. ‘Dismissed’ or ‘Deferred prosecution’ dispositions were not considered as a conviction. Cases with no documented disposition were included.

<sup>30</sup> See Fendrich, Michael, LeBel, Thomas P., “Evaluation of the Milwaukee County Drug Treatment Court: Annual Report for 2013,” Center for Applied Behavioral Health Research, University of Wisconsin-Milwaukee Helen Bader School of Social Welfare, January 7, 2014. “Criminal traffic offenses included misdemeanor crimes such as hit and run, OWI (3rd), and operating a vehicle while revoked (where revocation was due to an alcohol or controlled substance refusal)”

The Wisconsin Community Services leadership team defines recidivism in its programs, and therefore for participants of the Milwaukee County Day Reporting Center, as “the conviction of a crime at an equal or greater level of seriousness to the original crime for which one was serving a probation, parole, deferred prosecution, alternative to incarceration, etc. sentence when admitted to WCS services within one year of successful discharge from a given intervention/program.”<sup>31</sup>

## E. Recommended CJC Recidivism Framework

The CJC has no shortage of options when deciding on how to measure recidivism. While the starting events are determined by the program being measured, the CJC has to decide on appropriate failure event or events along with an appropriate window or windows of time.

Because there are benefits to the use of each failure event, it is recommended that, if the appropriate data is readily available, the CJC use rearrest, recharge, reconvict, and criminogenic reconvict<sup>32</sup> rates based on date of arrest.<sup>33</sup> This would offer an array of information to policy makers and would track both the work of Maltz and the Bureau of Justice Statistics.

For the window of time, it is recommended that the CJC use a variety of time windows, ranging from 6 months to 5 years, in 6 month increments. This is the range that is seen in the research and offers a full array of longitudinal data for use in policymaking.

<u>Rearrest</u> : An arrest date within the recidivism window of time.
<u>Recharge</u> : An arrest date within the recidivism window of time that resulted in charges being filed as demonstrated by a CF, CM, or CT CCAP case filing.
<u>Reconviction</u> : An arrest date within the recidivism window of time that resulted in a conviction as demonstrated in a CF, CM, or CT CCAP case filing.
<u>Criminogenic Reconviction</u> : An arrest date within the recidivism window of time that resulted in a conviction, as demonstrated in a CF, CM, or CT CCAP case filing, that is equal to or more serious than the individual’s original conviction.

*Figure 3: Recommended CJC Recidivism Measures*

If arrest data is not available, it is recommended that the CJC use recharge, reconvict, and criminogenic reconvict rates using the charging date.<sup>34</sup> These measures, while less ideal<sup>35</sup> than measures using date of

<sup>31</sup> See Email titled “Recidivism definition and report” sent by Sara Carpenter, June 18, 2014. WCS makes explicit that their measure does not include re-arrests or new charges. Also, “while this definition includes only successful discharges, as recidivism is not a fair measure following an incomplete or unsuccessful intervention. Re-convictions following unsuccessful discharges should be measured for informational purposes if resources allow, but not reflected in the recidivism rate.” In addition to the one year window of time, recidivism is also measures at 6 months and 18 months.

<sup>32</sup> The CJC needs to determine how to rank offenses in order of seriousness.

<sup>33</sup> If date of arrest is used, CJC may have to determine whether to count all arrests or only arrests for certain reasons.

<sup>34</sup> The methodology would follow the methodology already used by the Milwaukee County Drug Treatment Court. See FN30.

<sup>35</sup> In addition to being further away from the offense date, relying on CCAP data to measure recidivism only allows for Wisconsin cases to be counted. Out of state cases would not be included in the measurements. An important measure to know when assessing

arrest, still offer a robust array of information to policy makers while using data that is readily available to CJC staff. Each amount of time offers valuable information to policy makers. The only downside to using various windows of time is the staff time needed to calculate the rates. However, the amount of staff time will be minimal in the short run when the measurement first starts, increasing over time until the first five year measurements are taken.

Recharge: A new charge date, within the recidivism window of time, as demonstrated by a CF, CM, or CT CCAP case filing.

Reconviction: A new charge within the recidivism window of time, as demonstrated by a CF, CM, or CT CCAP case filing, that results in a conviction as demonstrated in the case filing.

Criminogenic Reconviction: A new charge, within the recidivism window of time, as demonstrated by a CF, CM, or CT CCAP case filing that resulted in a conviction, as demonstrated in the case filing, that is equal to or more serious than the individual's original conviction.

*Figure 4: Alternative Recommended CJC Recidivism Measures*

It is recommended that the CJC have in place a strategy for consistent tracking of recidivism rates such that individual program participants are longitudinally tracked with starting events beginning on January 1<sup>st</sup>, 2015. The first recidivism measures would be six month recidivism rates, which would be calculated for participants released/graduating between January 1<sup>st</sup>, 2015 and June 30<sup>th</sup>, 2015. The measures for this first cohort would then be released sometime after December 31<sup>st</sup>, 2015.